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FISCAL IMPACT STATEMENT

LS 6436

BILL NUMBER: HB 1376

NOTE PREPARED: Feb 27, 2012

BILL AMENDED: Feb 27, 2012

SUBJECT: State Fiscal Matters.

FIRST AUTHOR: Rep. Espich

FIRST SPONSOR: Sen. Kenley

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Excess State Reserves Transfer/Automatic Taxpayer Refund:* The bill provides that for purposes of the automatic taxpayer refund statutes, the amount of the refund for qualifying taxpayers is determined on a per capita basis by dividing the total amount of excess state reserves available to provide automatic taxpayer refunds by the total number of qualifying taxpayers. Effective January 1, 2013, the bill makes the threshold for use of excess reserves 14% (rather than 10%, under current law) of general revenue appropriations for the state fiscal year. It specifies that: (1) if the amount of the excess reserves is less than \$100,000,000, all of the excess reserves shall be transferred to the Pension Stabilization Fund; and (2) if the amount of the excess reserves is \$100,000,000 or more, 50% of the excess reserves shall be transferred to the Pension Stabilization Fund and 50% of the excess reserves shall be used for the purposes of providing an automatic taxpayer refund. (Under current law, the excess reserves are divided equally between the Pension Stabilization Fund and the automatic taxpayer refund, regardless of the dollar amount of the excess reserves.) It also provides that beginning in 2013, the Office of Management and Budget shall calculate, after the end of each odd-numbered state fiscal year, the total amount of state reserves.

Family and Social Services Administration: The bill reestablishes the Office of the Secretary of Family and Social Services and other divisions and offices within FSSA. It specifies that the authority of the Secretary of Family and Social Services or the Office of Medicaid Policy and Planning to adopt an emergency rule concerning Federal Medicaid waiver program provisions or Federal programs administered by the Office of the Secretary expires on December 31, 2012. It also specifies that such an emergency rule that is effective for more than one year must go through the general rulemaking process.

Little Calumet River Basin Development Commission: The bill defines "parcel" for purposes of the statute

allowing the Little Calumet River Basin Development Commission (Commission) to levy a special assessment on parcels of land within the Little Calumet River and Burns Waterway watershed in Lake County. It specifies areas in which the Commission may operate and specifies the total amount of the loan repayment by the Commission to the Northwest Indiana RDA. It provides that the none of the four members from a unit that borders the Little Calumet River may be from the same municipality.

Payments to Victims of State Fair Stage Collapse: The bill provides that the Attorney General shall attempt to resolve before January 1, 2013, all claims and suits brought against the state or its employees for a death or injury occurring as the result of an accident at the 2011 State Fair for an amount that, in the aggregate, does not exceed \$11,000,000. It specifies the amount of relief that victims of the accident at the State Fair may receive. It authorizes the Attorney General to establish a process for determining the amount of compensation for persons who suffered physical injuries involving permanent paralysis or permanent physical trauma or requiring major and ongoing long-term care. It establishes the Supplemental State Fair Relief Fund for the purpose of providing additional relief to the victims of the accident. It appropriates \$6,000,000 from the State General Fund to the Supplemental State Fair Relief Fund. It caps attorney's fees for representation of an eligible person regarding compensation from the Supplemental Fund at 10% of the total compensation paid to the eligible person from the Supplemental Fund. It provides that an eligible person may assign to the Attorney General the eligible person's right to pursue a cause of action for the tortious breach of an insurer's duty to deal with an insured person in good faith. It provides that if the Insurance Commissioner determines after a hearing that a person has committed an act that is listed as an unfair claim settlement practice and is related to a death or injury resulting from the accident at the 2011 State Fair, the Insurance Commissioner may order certain remedies. It specifies that the Insurance Commissioner may take such action without having to demonstrate that the act or practice occurs with such frequency as to indicate a general practice by the person. It provides that neither a hospital nor an ambulance may place a lien on a distribution made from the Supplemental State Fair Relief Fund to a victim of the State Fair disaster. It prohibits an insurer from claiming subrogation or reimbursement rights with respect to a distribution made from the Supplemental State Fair Relief Fund. It requires a person who intends to challenge the constitutionality of the prohibition against asserting subrogation or other reimbursement rights to file written notice of the person's intent to challenge this prohibition not later than 40 days after a distribution is made from the Supplemental State Fair Relief Fund.

Full-Day Kindergarten: The bill permits augmentation of the appropriation for full-day kindergarten and changes the amount distributed per child.

Effective Date: Upon Passage; July 1, 2012; January 1, 2013.

Explanation of State Expenditures: *Excess State Reserves Transfer:* The bill would reduce the expected excess reserve transfer to the Pension Stabilization Fund by \$7.95 M to \$9.3 M in FY 2013. The reduction would result from: (1) additional payments to victims of the State Fair stage collapse (described below); and (2) the augmented FY 2013 appropriation for full-day kindergarten in this bill (described below).

The bill also changes the excess state reserve transfer requirements (described below), but these changes will not affect excess reserve transfers in FY 2013. The impact of these changes on excess reserve transfers in subsequent years is indeterminable.

Full-Day Kindergarten: The bill provides a full-day kindergarten grant of \$2,400 for each kindergarten student enrolled in a full-day program for the 2012-13 school year. It allows augmentation of the current appropriation (\$89.1 M) to fully fund the grant.

For the 2011-12 school year, there are 67,752 students attending a full-day kindergarten program, and 66,401 of those students are funded by the state full-day kindergarten grant. The total number of kindergarten students in the 2011-12 school year is 78,154. The augmentation required could range between about \$78.3 M (\$2,400*66,752 - \$81.9 M) and \$105.7 M (\$2,400*78,154 - \$81.9 M).

(Revised) *Payments to Victims of State Fair Stage Collapse*: Under current law, the maximum amount that the state General Fund will pay to persons who are killed or injured in a single occurrence is \$5 M. This provision would permit the Office of the Attorney General to attempt to resolve all claims and suits brought against the state due to the stage collapse at the Indiana State Fair on August 26, 2011 by creating a Supplemental State Fair Award Fund of \$6 M.

Amount Available (in \$M) for Victim Compensation				
Initial Tort Payments		Supplemental Fund		Total Available
\$5.0	+	\$6.0	=	\$11.0

This bill would also increase the amount that each of the victims who were killed and were permanently injured to \$700,000 and increase the compensation to victims who were injured but not permanently disabled to an amount that was lesser than the amount of the person's eligible losses, or the amount that was claimed by each victim.

Any remaining money in this supplemental fund after paying claims does not revert to the General Fund until July 1, 2052. LSA estimates that the available monies that would remain after the initial tort payments and amount proposed in the bill would be \$1.66 M. The remaining funds would be available to pay for ongoing personal care expenses for individuals who suffered permanent paralysis or permanent physical trauma or requiring major and ongoing long-term care.

Funds Available (in \$M) After Current and Added Payments				
Total Available		Current and Added Payments		Available for Future Payments
\$11.00	-	\$9.34	=	\$1.66

The Office of the Attorney General reports that there were seven claims filed for the estates of persons killed and 57 claims filed by persons who were physically injured. This provision divides payments into three basic categories for determining the compensation to each victim. The payments shown in the following table were estimated by the Office of the Attorney General based on whether the person was killed or injured and, if injured, the extent of each person's injury.

Type	Number of Victims	Initial State Payments	Proposed Added Payments	Total Payments
Death	7	\$2,184,349	\$2,715,651	\$4,900,000
Permanent Disability	3	\$1,316,971	\$783,029	\$2,100,000
Physical Injury	54	\$1,498,680	\$845,585	\$2,344,265

Type	Number of Victims	Initial State Payments	Proposed Added Payments	Total Payments
Grand Total	<u>64</u>	<u>\$5,000,000</u>	<u>\$4,344,265</u>	<u>\$9,344,265</u>

Reauthorization of FSSA: The bill will reauthorize the administrative structure of the FSSA as it currently exists. (Upon its statutory expiration on June 30, 2011, authority for the FSSA was extended by the Governor's executive order.) The bill legalizes and validates actions by the FSSA taken after the expiration of authority on June 30, 2011. The bill does not include an expiration date. The FSSA administrative offices affected are:

- (1) The Office of the Secretary of Family and Social Services.
- (2) The Office of Medicaid Policy and Planning.

The bill also reestablishes operating procedures of the division advisory councils and provisions that relate to certain powers of the directors of the following divisions:

- (1) Disability and Rehabilitative Services.
- (2) Family Resources.
- (3) Mental Health and Addiction.
- (4) Aging.

(Revised) FSSA Emergency Rules: The bill provides that certain emergency rules previously adopted expire June 30, 2013. This provision has no fiscal impact since the rules contain the same expiration date. The bill also eliminates the emergency rule-making authority effective December 31, 2012, and provides that any emergency rules adopted after passage of the bill and December 31, 2012, must go through the general rule-making process.

Background Information on Excess Reserve Transfers: The bill makes the following changes to current statute relating to excess state reserve transfers.

(1) It changes the requirements for transfers to be made from excess reserves to the automatic taxpayer refund and the Pension Stabilization Fund. Under current statute, reserves ending the prior fiscal year that exceed 10% of the current fiscal year general revenue appropriations are to be transferred to the automatic taxpayer refund and the Pension Stabilization Fund. The bill increases the excess reserve threshold from 10% to 14% beginning in FY 2014.

(2) It changes the transfer amounts to each purpose in the event excess reserve transfers are allowed beginning in FY 2013. The bill requires 100% of the reserve transfer to be distributed to the Pension Stabilization Fund if the excess reserve to be transferred is less than \$100 M. If the excess reserve to be transferred is \$100 M or more, the transfers would be made pursuant to current statute where 50% would be transferred to the Pension Stabilization Fund and 50% to the automatic taxpayer refund.

(3) It changes the schedule under which such transfers could be made beginning in FY 2014. The bill would permit the excess reserve transfers to be made only in the first fiscal year of a biennium based on the total state reserves at the end of the second fiscal year of the preceding biennium.

It is estimated that under current statute, the excess reserve transfer could total \$333.6 M in FY 2013 according to the Combined Statement of Estimated Unappropriated Reserve (December 14, 2011). This would result in

transfers to the automatic taxpayer refund and the Pension Stabilization Fund of \$166.8 M each in FY 2013.

The bill also provides for an additional \$6 M in payments to State Fair stage collapse victims. It is assumed that these payments will be dispersed in FY 2012. The bill also augments appropriations for full-day kindergarten in FY 2013 with an estimated cost of \$78.3 M to \$105.7 M. Based on these expenditure changes, it is estimated that the excess reserve transfer in FY 2013 could range from \$315.0 M to \$317.7 M. Consequently, it is estimated that the excess reserve transfers to the automatic taxpayer refund and the Pension Stabilization Fund would total \$157.5 M to \$158.85 M each in FY 2013. Under current statute, the FY 2013 state reserve is estimated to total \$1,765.3 M. With the changes in the bill, the FY 2013 reserve is estimated to total \$1,672.2 M to \$1,696.9 M. It is indeterminable whether the FY 2013 excess reserves will be sufficient to permit excess reserve transfers in FY 2014.

Explanation of State Revenues: *Automatic Taxpayer Refund:* The bill would change the distribution of the automatic taxpayer refund credit among taxpayers effective beginning in FY 2013. Under current statute, the tax credit for each taxpayer would be calculated based on the percentage share of the total income tax paid by all taxpayers paid by that taxpayer. It is estimated that the bill would provide for a total of \$157.5 M to \$158.85 M in nonrefundable individual adjusted gross income (AGI) tax credits. This would be a decrease in revenue loss from the credit in comparison to current statute by an estimated \$7.95 M to \$9.3 M. The revenue loss is expected in FY 2013.

Background Information: Under current statute unchanged by the bill, the automatic taxpayer refund is provided through an individual AGI tax credit. The tax credit is nonrefundable and must be taken against the taxpayer's tax liability in the tax year the credit is provided. In addition, the tax credit is based on each taxpayer's relative share of the total overall tax liability for all eligible taxpayers. To be eligible for the tax credit, a taxpayer must have filed a resident income tax return for the two taxable years preceding the tax year in which the tax credit is made available and must have paid individual income tax for the preceding taxable year. Under current statute, it is estimated that \$166.8 M in excess reserves could be transferred to the automatic taxpayer refund. The bill provides for the tax credit to be distributed in an equal amount per taxpayer.

Explanation of Local Expenditures: (Revised) *Little Calumet River Basin Development Commission (LCRBDC):* Under current law and HEA 1264-2012, the LCRBDC may operate only within 1 mile of the bank of the Little Calumet River in Lake and Porter Counties. In order to address flooding within this area, this bill would also permit the LCRBDC to operate in areas that include tributaries to the Little Calumet and Burns Waterways.

HEA 1264-2012 provides for the transfer of specified amounts to the Northwest Indiana Regional Redevelopment Authority (NIRDA) under a schedule that extends to July 1, 2017. The total amount transferred under the schedule is \$6 M. Transfer amounts may be postponed or reduced if two-thirds of the LCRBDC members vote to adopt a resolution declaring an emergency exists. This bill states that the total of all transfers, even if postponed or reduced, is \$6 M.

Explanation of Local Revenues: School corporations or charter schools that apply for the full-day kindergarten grants are prohibited from charging fees for enrolling in or attending full-day kindergarten in the 2012-2013 school year.

State Agencies Affected: OMB; DOR; FSSA.

Local Agencies Affected: Little Calumet River Basin Development Commission; Northwest Indiana Regional Redevelopment Authority.

Information Sources: General Fund Combined Statement of Estimated Unappropriated Reserve, FY 2012-FY 2013, State Budget Agency, December 14, 2011. OFMA Income Tax Databases, 2009.

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